

1 JUDGE GILBERT: Pursuant to the authority of
2 the Illinois Commerce Commission, I now call Docket
3 No. 04-0335.

4 If I could have appearances for the record,
5 please, beginning with the Complainant.

6 MR. DEAN: Alvando Dean. Do you want my
7 address?

8 JUDGE GILBERT: (Nodding.)

9 MR. DEAN: Address, 3663 West 166th Street, in
10 Markham, Illinois 60426. Phone number, area code
11 (708) 596-5143.

12 MR. BUTTS: I'm Edward Butts, B-u-t-t-s. My
13 address is 1800 Hawthorne Lane, Suite 102, West
14 Chicago, Illinois 60185. Telephone, (630) 562-1515
15 appearing on behalf of the Respondent, Southwestern
16 Bell Communication Services, Inc., doing business as
17 SBC Long Distance.

18 JUDGE GILBERT: All right. We're here on a
19 complaint by Mr. Dean. He's filed a complaint, along
20 with several exhibits. I've reviewed all of those.
21 We had a very long prehearing, off-the-record
22 discussion so that we would all understand the nature

1 of Mr. Dean's complaint and the nature of the
2 position of the Respondent, SBC Long Distance.

3 My understanding of Mr. Dean's complaint is
4 that, in his view, the service package that he
5 purchased does not require him to pay additional
6 taxes and regulatory fees on top of the advertised
7 price for that service package, which is \$43.95 a
8 month for the first year and \$48.95 per month after
9 that.

10 Mr. Dean, if you would like to, for the
11 record, you could say what you would like, in
12 addition to what I have said, to describe your
13 complaint and what you would like SBC to do for you.

14 MR. DEAN: In addition, I would like for SBC to
15 be held responsible for their advertising and for the
16 agreement that we agreed upon, the \$43.95 for the
17 first 12 months and \$48.98 (sic) thereafter.

18 I would like to say that I certainly have
19 tried, from every respect, to get this resolved. As
20 a respect, I agreed to continue to pay the bill while
21 we negotiate and try to settle this. SBC agreed and
22 had me to sign up for long distance. I had all the

1 other features on my phone prior to that and,
2 therefore, that I wouldn't be charged no more than
3 \$43.95 per month for the first 12 months including
4 taxes. And, therefore, that's what I agreed upon and
5 that's what I was expecting. But, they are saying
6 something different. So, if they just give me the
7 \$43.95 and do what they have advertised here, I would
8 be happy with that and this thing could be settled.
9 Because I've been a customer of SBC for 37 years and
10 I give them nothing but high praises, excellent all
11 the time, up until this problem.

12 And other problems been existing. And,
13 therefore, I've been having all the problem (sic)
14 with my phone for more than a year and a half. And
15 that problem haven't been resolved. And I'm still
16 working with them and hoping that we can get this
17 thing straightened out and I can have my phone and
18 won't be tied up and aggravated with all of these
19 features in here; which I paid SBC a fee to protect
20 me from this kind of slander and other peoples (sic)
21 using my phone and all these different things that's
22 (sic) going on. I paid a fee to them for this, but

1 they did allow this to come in; and I was charged for
2 it. So, I hope that we can get this settled and they
3 would honor what they agreed upon and what they (sic)
4 was advertising in the package for the \$43.95. I
5 hope that they would honor that. And that would
6 settle this and we could just get back to our good
7 relationship.

8 JUDGE GILBERT: All right. And let me just
9 add, because I may have understated Mr. Dean's
10 complaint, that -- my understanding is that he also
11 believes that the monthly service charge for his
12 package should include certain additional features
13 that he had previously been receiving; which, I
14 believe, are 3-Way Calling and Call Forwarding. And
15 that he believes his monthly service charge should
16 include those items as well as applicable taxes and
17 fees.

18 Okay. Mr. Butts.

19 MR. BUTTS: On behalf of SBC Long Distance, I
20 would point out that Mr. Dean purchased a combined
21 package offering from SBC which included unlimited
22 local long distance provided by SBC Long Distance.

1 The package charge was, as he said, \$43.95 per month
2 for the first year and \$48.95 per month thereafter.
3 Twenty dollars of that was allocated to his long
4 distance service and SBC Long Distance has billed him
5 on his subsequent bill the \$20.00. And they have
6 added to that taxes and a regulatory surcharge.

7 So, to the extent that he is complaining
8 about the taxes, then -- then his complaint may
9 properly be directed to Long Distance, as to the
10 taxes on the \$20.00 portion of that bill that relates
11 to long distance. To the extent he's complaining
12 about those taxes and regulatory fees on the entire
13 \$43.95; then he also has to include SBC Midwest or
14 SBC Illinois, the local company, because that's not
15 provided by SBC Long Distance.

16 So, he needs to be aware that I will object
17 and file a motion to dismiss as to any complaint
18 broader than the taxes on the \$20.00 amount. As to
19 whether he was misled about that, I think that the
20 evidence will show, including the exhibits that he's
21 attached to his own complaint, that when he purchased
22 his service he was clearly described what he was

1 getting. It was clear from the initial letter that
2 that did not include that the taxes that were meant
3 were -- and surcharges were extra. I would note that
4 the local company sent him a confirmation of his
5 order that told him what he was getting, and which
6 clearly explained that that excluded taxes and
7 surcharges, which listed the services, and which
8 listed the separate charge for those additional
9 services. I -- he was sent terms and conditions
10 which also clearly explains that the taxes were
11 separate. And -- and so, you know, I don't think, in
12 any way, he can say that he was misled. And our
13 defense would be that we sold him the package and
14 appropriately. Well, to the extent he's making a
15 complaint against SBC Local, I'm sure their defense
16 -- their answer will be that he purchased the
17 service, that we're providing what we offered, and
18 that the -- the charges for the separate services
19 that are are not included in that package are
20 appropriate.

21 If he does not want those services, he can
22 certainly discontinue them. But if he wants those

1 services, there's separate tariff charges that apply
2 to those. As to the taxes and surcharges, it's clear
3 from all of the tariffs, it's clear from the
4 materials he was provided, it's been explained to him
5 many times that taxes are extra.

6 MR. DEAN: Your Honor, I would just like for
7 you to read this, where it says, "All long distance
8 service included." Right here.

9 JUDGE GILBERT: Okay.

10 MR. DEAN: So, that was -- I think that would
11 clear it up. Right there. Where it says, "all long
12 distance service." Where it says, "Benefits. All
13 long distance service." All of these features that
14 he's saying I didn't have, all of that was included
15 in that package for that price.

16 JUDGE GILBERT: Okay. I'll just note that Mr.
17 Dean has handed me his bill from SBC for the period
18 from March 25th through April -- I'm sorry. March
19 26th through April 25th, 2004. And he's indicating
20 some language up in the upper right-hand side of the
21 bill under the heading "SBC Benefits."

22 And -- has this particular bill been

1 attached to your complaint? Is this one of those --

2 MR. DEAN: Yeah. This is -- this is in the
3 complaint. This is what I signed up for.

4 JUDGE GILBERT: Okay. I'm not sure this
5 particular bill --

6 MR. BUTTS: Yeah. That's the April bill.

7 MR. DEAN: Yeah. That's in this complaint
8 right here, in there.

9 JUDGE GILBERT: Yeah. I don't think the April
10 bill is attached. But, I think you have earlier
11 bills that probably contain the same information.

12 MR. DEAN: Yeah, same information. And so,
13 this -- what it says here, it says, "All -- your all
14 long distance service includes: Economy Solutions
15 Plus, \$28.95. National Connections Long Distance,
16 which is the long distance, \$20.00. And the 12-month
17 promotion fee, which is \$5, which is deducted from
18 this amount. All Long Distance total, \$43.95."

19 Now, that's where it tells you all of this
20 is included. What you saying is not included, I had.

21 JUDGE GILBERT: Okay.

22 MR. BUTTS: Can I just take one little peek at

1 that?

2 MR. DEAN: Right up there. Right there.

3 That's what I signed up for.

4 (Discussion off the record.)

5 JUDGE GILBERT: Mr. Butts, one thing I might

6 have done was request an answer to the complaint.

7 Given what you've said, I assume, you have a motion

8 to make.

9 What's your intention? What do you want to
10 do?

11 MR. BUTTS: Well, I was planning to file it in
12 writing, if I have to. But, I would make a motion --
13 move to dismiss the complaint to the extent it
14 challenges anything other than the taxes and
15 surcharges that have been added to the long distance
16 portion of the bill, which is the \$20.00 piece. It's
17 beyond the jurisdiction of this Commission. Because
18 it does include Local Toll, I think the Commission
19 has some jurisdiction here. But, predominantly, this
20 is a long distance issue that should be before the
21 FCC. If it's a complaint against Long Distance it
22 belongs at the FCC and not at the local Commission.

1 So, my motion would be to dismiss it.

2 As to SBC Long Distance, if he wants to
3 pursue a claim against the local company, that's for
4 him to decide.

5 JUDGE GILBERT: Yeah. And --

6 MR. BUTTS: And I'll submit it in writing, if
7 you like.

8 JUDGE GILBERT: All right. Let's go off the
9 record for a moment.

10 (Discussion off the record.)

11 JUDGE GILBERT: Mr. Butts, I would like you to
12 present a written motion for dismissal. Mr. Dean,
13 you'll have, let's say, three weeks in which to
14 answer Mr. Butts' motion. All right. Now,
15 typically, one would have two weeks, I'm giving you
16 three. He will serve on you -- he will send to your
17 address a copy of what he's writing.

18 And by when can you do that, Mr. Butts?

19 MR. BUTTS: Early next week.

20 JUDGE GILBERT: Okay. Give me a date.

21 MR. BUTTS: How about Wednesday of next week,
22 which would be -- I'm going to be out of town this

1 weekend -- the 21st.

2 JUDGE GILBERT: Okay. So --

3 MR. BUTTS: I'm sorry. That's not Wednesday.

4 Wednesday is the 19th. I'm sorry.

5 JUDGE GILBERT: May 19th. Okay.

6 MR. DEAN: That's next week?

7 MR. BUTTS: Right.

8 MR. DEAN: The 19th.

9 JUDGE GILBERT: Okay. So then, Mr. Dean,

10 you'll have to June 16th to respond to Mr. Butts'

11 motion. And that means in writing. Send it -- file

12 at the same place you filed your complaint.

13 MR. DEAN: Uh-hum.

14 JUDGE GILBERT: Okay. And it would be nice if

15 I could get a copy of it. You don't work off a

16 computer, do you? You work by hand?

17 MR. DEAN: Yes, I work by hand.

18 JUDGE GILBERT: Okay. Don't worry about

19 sending me a copy. I will look for it, then, down in

20 our system. And I'll pull it out of our system and

21 copy it from our computer.

22 MR. DEAN: Okay. If you tell me, I can just

1 send it directly to you.

2 JUDGE GILBERT: That's all right. You don't
3 have to make copies. You don't have to incur copying
4 expense. I'll get it, but you do have to send a copy
5 of it to them.

6 Mr. Butts, can you give him an address?

7 MR. BUTTS: I was looking for my cards, but I
8 don't think I have the right briefcase.

9 MR. DEAN: Your Honor, I would just like to say
10 -- as I was thought to say (sic) -- with the FCC -- I
11 talked directly to the FCC in Washington, D.C. And
12 they (sic) was the one who referred me back to the
13 State of Illinois Commerce Commission. And that's
14 why I contacted you all.

15 JUDGE GILBERT: Yes.

16 MR. DEAN: And that's why the complaint --
17 that's why I say with the FCC or whatever -- that's
18 why I went through that process first. And then they
19 said, "We're going to give that back to you -- to the
20 Illinois Commerce Commission. And this is the
21 number. That is the place where you'll call. And
22 there is where it will be sent to."

1 JUDGE GILBERT: Correct. You did come to the
2 right place to the extent that you want to complain
3 about your local phone company and your local toll
4 company, which happens to be SBC. So, the FCC told
5 you correctly. It's that when you made out your
6 complaint, you named the long distance company
7 instead of the local company. And I know that may
8 feel with a technicality to you. I can understand
9 your frustration about that. But you do have to aim
10 your complaint against local SBC.

11 But, in any event, Mr. Butts is going to
12 file a motion. You can say whatever you want in
13 response, but you do have to write it down --

14 MR. DEAN: Uh-hum.

15 JUDGE GILBERT: -- and file it. I'll take a
16 look at it. I'll rule on that motion. And at that
17 point we'll decide if we need another hearing or if
18 we don't.

19 MR. DEAN: Okay.

20 JUDGE GILBERT: So, I won't set another hearing
21 right now; okay?

22 MR. DEAN: Okay.

1 JUDGE GILBERT: So, everyone understands what
2 they have to do? Mr. Butts is going to file a
3 motion. He's going to send you a copy at your home.
4 You'll have three weeks to write something down in
5 response and file that with the Commission.

6 MR. DEAN: Okay. Well, me -- I'm like Johnny
7 on the spot. As soon as I get it, I go to work on it
8 right away.

9 JUDGE GILBERT: Okay. Can you read that?

10 MR. DEAN: Oh, yes.

11 MR. BUTTS: It'll be on what I send you anyway.

12 JUDGE GILBERT: Thanks, we're done.

13 MR. BUTTS: Thank you very much.

14 MR. DEAN: All right. Thank you, Your Honor.

15 (Whereupon the above-entitled
16 matter was ended with no
17 continuance date given.)

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